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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/755,218

01/12/2004

Jeffrey Berichon

78297/00001

1889

23380 7590 02/17/2009

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EXAMINER

ROJAS, HAJIME S

ART UNIT

PAPER NUMBER

3627

NOTIFICATION DATE

DELIVERY MODE

02/17/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/755,218	<b>Applicant(s)</b> BERICHON ET AL.	
	<b>Examiner</b> HAJIME ROJAS	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

The following is a Final Office action in response to communications received,  
December 01, 2008.

Claims 1, 11, 21 and 31 have been amended. Therefore claims 1-40 are pending and  
addressed below.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

### **Claims 31-40 are rejected under 35 U.S.C. 101.**

Based on Supreme Court precedent and recent Federal Circuit decisions, a 35 U.S.C § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the particular machine to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively

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recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps are not tied to a particular machine and do not perform a transformation. Thus, the claims are non-statutory.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101.

*Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.*

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1- 40 are rejected under 35 U.S.C. 102(e) as being anticipated by**

**Waddington et al. (US 2002/0010661 A1 hereinafter Waddington).**

As per claims 1, 11, 21 and 31 Waddington discloses an electronic system, method, computer readable medium and computer implemented method, respectively, for managing items in a supply chain comprising:

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item information capturing means adapted for capturing identification information associated with a plurality of items associated with unique sources and destinations {into a computer inclusive of a processor and data storage}, each item being identified for supply chain management in connection with a pooled transport distribution system ([paragraph][0085], wherein information about an item which is part of a distribution chain is scanned using a delivery device. See also [0079], several distribution centers and Figure 1, plurality of retail stores and [0097], cross-dock);

consolidation mode specifying means adapted for receiving user input corresponding to a user-selected consolidation mode relative to consolidation and routing of transport of items associated with such user ([0089], user selected pallet mode relative to consolidation, multiple containers consolidated in a pallet and routing);

mode specifying means adapted for receiving user input corresponding to each of the plurality of sources, each received user input being representative of a selection of at least one of a plurality of capturing modes, wherein each capturing mode is adapted for creating associated information by associating the captured item information with supply chain information in accordance with one of the plurality of sources corresponding thereto; ([0088], wherein user is able to input information based on the displayed options and [0089], wherein corresponding plurality of sources are identified);

communicating means adapted for communicating the associated information to an associated {the} data storage device([0085], wherein the information gathered is uploaded to the distribution center computer system) for storage in accordance with

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one of the plurality of sources corresponding thereto ([0079], several distribution centers); and

means adapted for commencing distribution of each item to its associated destination in accordance with the routing specified by the user corresponding thereto ([0085], operations performed for the delivery of items in accordance with routing specified. See also [0011]).

As per claims 2, 12, 22 and 32, the system of claim 1, the method of claim 11, the medium of claim 21 and the method of claim 31 respectively, wherein the plurality of capturing modes includes {comprises} at least one of a consolidation stage, a grid area stage, a loading vehicle stage, a delivery stage and a pick up stage ([0088], "Pre Load", "Route Select", "Manifest". See also Figure 4).

As per claims 3, 13, 23 and 33, the system of claim 2, the method of claim 12, the medium of claim 22 and the method of claim 32 respectively, wherein the consolidation stage mode is adapted for associating the captured item information with supply chain information comprising at least one of a pallet identification with which the item has been associated, a time of capture information, a date of capture information, and item classification information ([0089], "Route Select", pallet mode. See also [0090], date and time of deliveries. See also [0096], wherein containers are classified as full or half).

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As per claims 4, 14, 24 and 34, the system of claim 2, the method of claim 12, the medium of claim 22 and the method of claim 32 respectively, wherein the grid area stage mode is adapted for associating the captured item information with supply chain information comprising at least one of a grid identification with which the item has been associated, a time of capture information, and a date of capture information ([0081] and [0083], wherein a barcode associated with a location in a warehouse is scanned and forms part of the item unique identifier which is again scanned on "PreLoad" [0087]. See also [0090], date and time of deliveries).

As per claims 5, 15, 25 and 35, the system of claim 2, the method of claim 12, the medium of claim 22 and the method of claim 32 respectively, wherein the loading vehicle stage mode is adapted for associating the captured item information with supply chain information comprising at least one of a vehicle identification, wherein the vehicle has been identified for transporting the item, a time of capture information, a date of capture information, and a delivery destination ([0089], "Route Select", Truck number. See also [0090], date and time of deliveries and [0091], delivery stops).

As per claims 6, 16, 26 and 36, the system of claim 2, the method of claim 12, the medium of claim 22 and the method of claim 32 respectively, wherein the delivery stage mode is adapted for associating the captured item information with supply chain information comprising at least one of a time of capture information, a date of capture information, item damage information, and item refusal information ([0099], "Manifest",

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items flagged as refused. See also Figure 53, wherein the user can choose “Unsalable Rcvd Damaged”).

As per claims 7, 17, 27 and 37, the system of claim 2, the method of claim 12, the medium of claim 22 and the method of claim 32 respectively, wherein the pick up stage mode is adapted for associating the captured item information with supply chain information comprising at least one of a time of capture information, a date of capture information, an item recipient identity, item damage information, and item refusal information ([0099], “Manifest” includes date and time, items flagged as refused and [0110], receiving agent’s name. See also Figure 53, wherein the user can choose “Unsalable Rcvd Damaged”).

As per claims 8, 18, 28 and 38, the system of claim 1, the method of claim 11, the medium of claim 22 and the method of claim 32 respectively, wherein the communicating means comprises at least one of a physical connection to the data storage device, a wireless connection to the data storage device, a Bluetooth connection to the data storage device and a 802.11 connection to the storage device ([0086], delivery device wirelessly communicates with distribution center computer).

As per claims 9, 19, 29 and 39, the system of claim 1, the method of claim 11, the medium of claim 21 and the method of claim 31 respectively, wherein the data storage device is adapted to be accessed through an Internet connection ([0079], orders to



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distribution center computer received through internet. See also [0119], distribution center computer accessed through internet).

As per claims 10, 20, 30 and 40, the system of claim 1, the method of claim 19, the medium of claim 29 and the method of claim 39 respectively, wherein the data storage device comprises means adapted for formatting the associated information in accordance with an input user request ([0079], orders received by mail are entered into the distribution center computer. See also [0086], wherein information about deliveries is uploaded to the distribution center computer).

### ***Response to Arguments***

In response to Applicant's amendment directed to claims 11-20, rejection under 35 USC § 101, Examiner withdraws rejection. However, in response to Applicant's amendments directed to claims 31-40, Examiner respectfully submits that the mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. *Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.* Therefore, claims 31-40 are rejected under 35 USC § 101.

Applicant's arguments filed on December 01, 2008 with respect to claims 1-40, regarding the 35 USC § 102 (e) rejection, have been considered but are not persuasive.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAJIME ROJAS whose telephone number is (571)270-5491. The examiner can normally be reached on EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on (571)272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

H.R.

Patent Examiner, AU 3627

**/F. Ryan Zeender/**

**Supervisory Patent Examiner, Art Unit 3627**